

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1565

APPLICATION OF LYKES BROS. STEAMSHIP CO., INC.  
FOR THE BENEFIT OF THE GOVERNMENT OF ARAB  
REPUBLIC OF EGYPT

ORDER OF REMAND

The Commission has determined to review the Initial Decision ("I.D.") of Administrative Law Judge Charles E. Morgan ("Presiding Officer") in the above-captioned proceeding. The Presiding Officer granted applicant Lykes Bros. Steamship Co., Inc. ("Lykes") permission to waive collection of a total of \$551,300.75 of the applicable freight charges on a shipment to Alexandria, Egypt of tractor trailers intended for military use as tank transporters.

Lykes' affiant, Traffic Coordinator La Jean Connick, declared that George F. Roberg, of Lykes' Baltimore office, made the booking at an agreed rate which "had been previously filed for a prior movement" but had already expired; and that due to an oversight by Ms. Connick, the request to the U.S. Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference ("Conference")<sup>1</sup> to reinstate the agreed-upon rate "was not

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<sup>1</sup> In joining the application, the Conference has submitted an affidavit identifying itself as the U.S. Atlantic and Gulf Ports/Eastern Mediterranean and North American (sic) Freight Conference.

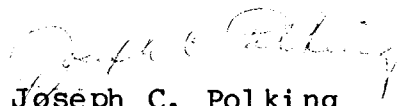
done in time to cover" the December 30, 1986 shipment. (Connick affidavit, at 2.) The corrected rate was eventually filed effective March 1, 1987.

The Presiding Officer concluded that "there was an error of administrative or clerical nature made by Lykes in failing to provide for timely publishing of the agreed rate." I.D., at 3.

Despite the fact that Lykes' application is submitted under sworn statement, the Commission is not entirely satisfied that the nature and cause of the alleged administrative error have been adequately addressed. An attempt should be made to obtain further evidence of the error, to enable the Commission to make an informed decision as to the merit of the application. See Special Docket No. 534, Cutler-Hammer Denver v. Lykes Bros. Steamship Co., Inc., Order on Remand, 20 F.M.C. 494, n. at 495 (1978).

THEREFORE, IT IS ORDERED, That this proceeding is remanded to the Presiding Officer for the purpose of allowing the parties an additional opportunity to furnish evidence of the nature described herein, and for issuance of a supplemental initial decision within 45 days of the date of this Order.

By the Commission.

  
Joseph C. Polking  
Secretary

( FEDERAL MARITIME COMMISSION )  
( SERVED SEPTEMBER 30, 1987 )  
( EXCEPTIONS DUE 10-22-87 )  
( REPLIES TO EXCEPTIONS DUE 11-13-87 )

FEDERAL MARITIME COMMISSION

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SPECIAL DOCKET NO. 1565

APPLICATION OF LYKES BROS. STEAMSHIP CO., INC.  
FOR THE BENEFIT OF WORLD FOOD PROGRAMME

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Application, as supplemented by letter dated September 25, 1987, with attachments thereto, for permission to waive collection of \$551,300.75 of the applicable freight charges on a shipment of tractor trailers, intended for military use as tank transporters, granted.

SUPPLEMENTAL INITIAL DECISION<sup>1</sup> OF  
CHARLES E. MORGAN, ADMINISTRATIVE LAW JUDGE

The initial decision served July 31, 1987, granted the subject application for permission to waive collection of a portion (\$551,300.75) of the applicable freight charges (\$2,104,966.50) on a shipment of 65 tractor trailers, intended for military use as tank transporters, from Houston, Texas, to Alexandria, Egypt.

The initial decision had concluded that there was an error of administrative or clerical nature made by Lykes in failing to provide for timely publishing of the agreed rate on the tractor trailers. The Conference, of which Lykes was a member, had joined in the application.

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<sup>1</sup> This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 CFR 502.227).

By Order on Remand, served August 25, 1987, the Commission stated that it was not entirely satisfied that the nature and cause of the administrative error had been addressed adequately, and accordingly remanded the matter for an attempt to obtain further evidence of the error.

Mr. R. J. Finnan, Tariff Publishing Officer of Lykes, has submitted further evidence with his letter dated September 25, 1987. Attached thereto are two items of new evidence.

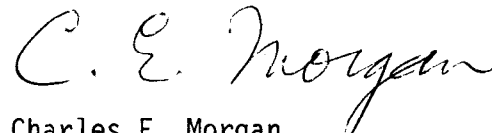
One, is the affidavit of Mr. George F. Roberg, Container Sales Coordinator, of Lykes' Baltimore office. He stated that on November 26, 1986, he negotiated the agreed rate of \$108.50 per ton (W/M) to cover the subject movement of 65 tractor trailers; that this booking was in addition to a movement of tractor trailers on the Zoella Lykes V/106 which sailed August 18, 1986; that it was intended that the previously filed rate of \$108.50 per ton would continue to apply; but that he (Mr. Roberg) was unaware that an expiration date had caused this rate to expire before the subject shipment of 65 tractor trailers occurred; and that consequently he failed to communicate that the agreed rate of \$108.50 per ton should be extended, or filed by Lykes' Houston office with the Conference.

The second item of new evidence attached to the letter of September 25, 1987, is the affidavit of Mr. Charles DeMarais, Project Manager for FMS of Four Winds Consolidators, agent for the Government of the Arab Republic of Egypt, Procurement Office of Washington, D. C. He states that on December 3, 1986, he arranged the booking with Lykes' Baltimore office, Mr. George F. Roberg, of 65 tractor trailers at an agreed rate of

\$108.50 per ton (W/M), it being intended to apply for the sailing of the Tyson Lykes from Houston to Alexandria on December 30, 1986.

Under all the circumstances in the present case, with the added evidence above, it is concluded and found that there now is ample evidence to approve the application for waiver of \$551,300.75 of the applicable freight charges on the shipment herein. The application is approved.

Lykes is directed to provide for the filing of the notice in the tariff of the United States Atlantic and Gulf/Eastern Mediterranean and North American Freight Conference, as previously set forth in the prior initial decision.

  
Charles E. Morgan  
Administrative Law Judge

Washington, D. C.  
September 30, 1987

(S E R V E D )  
( OCTOBER 1, 1987 )  
( FEDERAL MARITIME COMMISSION )

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

September 30, 1987

SPECIAL DOCKET NO. 1565

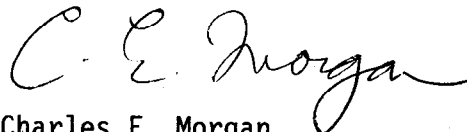
APPLICATION OF LYKES BROS. STEAMSHIP CO., INC. FOR  
THE BENEFIT OF THE GOVERNMENT OF ARAB REPUBLIC OF EGYPT

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ERRATUM

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On page 1 of the Initial Decision served September 30, 1987, the title of the proceeding is incorrectly shown. Attached is a replacement page showing the correct title.



Charles E. Morgan  
Administrative Law Judge

(S E R V E D)  
( , NOVEMBER 5, 1987 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

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SPECIAL DOCKET NO. 1565

APPLICATION OF LYKES BROS. STEAMSHIP CO., INC. FOR  
THE BENEFIT OF THE GOVERNMENT OF ARAB REPUBLIC OF EGYPT

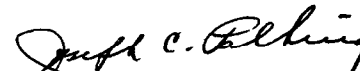
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NOTICE

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Notice is given that no exceptions were filed to the September 30, 1987, supplemental initial decision in this proceeding and the time within which the Commission could determine to review has expired. No such determination has been made and accordingly, that decision has become administratively final.

Applicant shall, within 30 days, waive charges and publish and file with the Commission a tariff notice in the manner required by the initial decision and, within five days thereafter, furnish the Secretary with evidence of waiver along with a copy of the prescribed tariff notice.

  
Joseph C. Polking  
Secretary